IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6205 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRA SUREJI NAVKAR MANDIR TRUST

Versus

STATE OF GUJARAT

Appearance:

MR MB GANDHI for Petitioner

Mr.PREMAL JOSHI, A.G.P. for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 16/11/2000

ORAL JUDGEMENT

1. The petitioner trust created for religious and charitable purpose required some land for carrying out the object of the trust. Proposal was made to the Collector which was accepted and the price of the land

was fixed at the rate of Rs.25/- per sq.mtr. According to the petitioner Trust this price was excessive and it could not exceed Rs.15/- per sq.mtr. Application for allotment of 8000 sq.mtrs. of land of Survey No.499/1/Part was thus made vide Annexure : A. The Collector, Mehsana, through his letter dated 25.1.1991 informed that 8720 sq.mtrs. land of the aforesaid Survey No.499/1/part was allotted to the petitioner at the rate of Rs.25/- per sq.mtr. The petitioner was required to pay Rs.2,18,000/- for the land and Rs.300/- for the trees standing on the land vide Annexure : C. The petitioner deposited the aforesaid amount vide Annexure : D on 22.2.1991. The deposit was made within 30 days of the communication. Possession was handed over to the petitioner trust on 24.4.1991. Mutation was done in the name of the petitioner in revenue records. Thereafter the matter remained silent. On 30.11.1991 the petitioner received registered letter from Collector, Mehsana intimating that the price of the land has been reassessed and determined at Rs.3,49,100/-. The petitioner was called upon to deposit the additional sum of Rs.1,30,800/within 10 days vide Annexure : G. The petitioner was surprised to receive such communication. According to the petitioner final price of the land could not exceed Rs.15/- per sq.mtr. The petitioner made representation dated 16.12.1991 vide copy Annexure : H to the Collector for reduction of the price, but till date no action has been taken on the representation. On 27.1.1992 the petitioner was called upon through letter to deposit the difference by 9.2.1992 failing which the petitioner was threatened that the grant would be cancelled. Thereafter the petitioner preferred Revision u/s.211 of the Bombay Land Revenue Code which was returned with observation by the Special Secretary on 31.7.1992 on the ground that the orders dated 2.3.1991 and 22.3.1992 regarding determination of price are orders passed by the Government hence such orders are not revisable u/;s.211 of the Bombay Land Revenue Code nor such orders are appealable. It is therefore the petitioner was forced to file this writ petition.

2. The petition was admitted on 28.12.1992. No counter Affidavit has been filed so far.

3. On 11.12.1992 interim order was passed directing the petitioner to deposit 50 % of the difference demanded by the respondent Authority. Shri M.B.Gandhi for the petitioners informs that this amount has already been deposited.

4. Shri M.B.Gandhi for the petitioner and Shri

Premal Joshi, learned A.G.P. for the respondents hav been heard. In the absence of counter Affidavit it has to be accepted that what is alleged in the petition is correct and it has to be accepted as such.

5. Annexure : G is actually under challenge in this petition. The main grievance of the petitioner is that reassessment of the price by the Authorities is illegal and violative of principles of natural justice. I find force in the grievance. Initially the grant was made at the rate of Rs.25/- per sq.mtr. Shri Gandhi has informed that this amount was subject to redetermination in future. However, when reassessment or redetermination was made by the Authority no opportunity of hearing was granted to the petitioner. It was exparte enhancement of the price. Consequently such unilateral enhancement suffers from violation of principles of natural justice. Moreover the petitioner tried to avail of the alternative remedy by filing revision u/s.211 of the Bombay Land Revenue Code which was returned on the ground that the orders dated 2.3.1991 and 21.3.1992 were passed by the State Government hence such orders are neither revisable nor appealable before the Special Secretary. In these circumstances this writ petition had to be filed.

6. It may also be mentioned that besides availing alternative remedy by filing the revision the petitioner also moved representation Annexure : H dated 16.12.1991 to the Collector for looking into its grievance but it is alleged that till date the said representation has not been decided. This fact has not been controverted by any counter Affidavit filed by the respondents. As such also the order of enhancement of price is contrary to law and illegal.

7. For the reasons stated above the petition succeeds and is hereby allowed. The impugned communication Annexure : G is hereby quashed. The Collector, Mehsana, respondent No.2, is herby directed to decide the representation Annexure : H dated 16.12.1991 of the petitioner within a period of two months of receipt of certified copy of this order after affording an opportunity of hearing to the petitioner regarding proposed enhancement of price and the representation shall be decided through a speaking order in accordance with law. Since 50 % of the enhancement amount has also been deposited by the petitioner it is further ordered that the petitioner shall not be dispossessed from the disputed land for a period of three weeks from the date of decision of the Collector on petitioner's representation, Annexure : H dated 16.12.1991. There

shall be no order as to costs.

sd/-

Date : November 16, 2000 (D. C. Srivastava, J.)

sas